A L Kalra

Vs

Project and Equipment Corporation of India Ltd.

Civil Appeal No. 2703 of 1981

(D. A. Desai, O. Chinnappa Reddy, E. S. Venkataramiah JJ)

01.05.1984

JUDGMENT

DESAI, J. -

1. Failure to adjust the antenna to the operative channel and dipping the head like the proverbial ostrich in the sand so as not to view the changing kaleidoscope of the law can alone be said to be responsible for this trivial matter to be brought to this Court.

2. Respondents the Project and Equipment Corporation of India Ltd. ('Corporation' for short) since its formation in 1971 a wholly owned subsidiary company of State Trading Corporation ('STC' for short), a Government of India Undertaking upto 1976 when it was separated and since then it functions as a Government of India undertaking. The appellant A. L. Kalra joined as Upper Division Clerk in the STC on August 6, 1963. On November 1, 1969 he came to be promoted as Assistant and earned a further promotion on May 22, 1974 as Accountant. On the setting up of the Corporation, the appellant exercising his option came to be transferred as Accountant to the Corporation on November 9, 1976. Under the relevant conditions of transfer, he continued to be governed in the matter of recruitment and promotion by the relevant rules of the STC. He was promoted in an officiating capacity as Deputy Finance Manager Grade II on June 29, 1978 and he was put on probation after being promoted as Deputy Finance Manager Grade II on re

3. In respect of the house building advance according to the respondent-Corporation, in view of Rule 10 (1) (c) (i) the appellant was required to utilise the amount drawn by him for the purpose for which advance was granted within two months of drawal and submit the documents evidencing the purchase of plot within the prescribed time failing which he was liable to refund at once the entire amount together with interest to the Corporation. The agreement dated April 4, 1979 executed by the appellant also obligated him to utilise the advance for the purpose for which the same was sanctioned and to produce the sale-deed for verification by the Corporation failing which the whole of the advance had to be refunded with interest. It was alleged that the appellant neither utilised the advance for the purchase of plot nor refunded the amount despite several reminders and ultimately on November 13, 1979 a memorandum was served upon him cautioning him that if he failed to refund the entire amount forthwith, disciplinar

4. In respect of the conveyance advance, which was sanctioned on July 7, 1979 the appellant is alleged to have committed a default by not purchasing the motor cycle within a period of one month as required by Rule 10 of the Conveyance Advance Rules, and on November 13, 1979 he was advised to refund the amount by November 14,1979 failing which he was threatened with disciplinary action. It is, however, admitted that the appellant purchased a scooter in April 1980 and

submitted the documents which appear to have been accepted by the Corporation. The balance of advance was also refunded.

5. A memorandum dated July 22, 1980 was served upon the appellant stating therein that the competent authority proposes to hold an inquiry against him under Rule 27 of the Project and Equipment Corporation Of India Ltd. Employees' (Conduct, Discipline and Appeal) Rules, 1975 ('1975 Rules' for short). There were two heads of charges in the charge-sheet drawn up against the appellant on which disciplinary inquiry was proposed to be held. These two heads of charges read as under :

Article I

Shri A. L. Kalra while functioning as Deputy Finance Manager Grade II in the Finance Division of the PEC during April, 1979 applied and drew an advance of Rs 16,050 for purchase of a plot of land at Faridabad. But he did not furnish the relevant documents in the office nor did he refund the amount of advance to the Corporation within two months of the date of drawal of the advance as required under Rule 10 (1) (c) (i) of PEC House Building Advance (Grant and Recovery) Rules.

Shri Kalra by his above act exhibited lack of integrity and conduct unbecoming of a public servant and violated Rule 4 (1) and (iii) and Rule 5 (5) of the PEC Employees' (Conduct, Discipline and Appeal) Rules and Rule 10 (1) (c) (i) of PEC House Building Advance (Grant and Recovery) Rules and thereby committed misconduct punishable under the PEC Employees' (Conduct, Discipline and Appeal) Rules, 1975.

Article II

Shri A. L. Kalra drew a conveyance advance of Rs. 11, 000 in July, 1979 for purchasing a motor cycle, but did not utilise the amount for the above purpose and did not furnish cash receipt etc. evidencing purchase of the vehicle within one month as required under Rule 8 of the PEC Conveyance Advance (Grant and Recovery Rules. Nor did he refund the amount of advance to the Corporation as required under Rule 10 (1) ibid.

Shri A. L. Kalra by his above act exhibited lack of integrity and conduct unbecoming of a public servant and violated Rule 4 (1) (i) and (iii) and Rule 5 (5) of PEC Employees (Conduct, Discipline and Appeal) Rules and also violated Rule 8 and Rule 10 (i) of the PEC Conveyance Advance (Grant and Recovery) Rules and thereby committed misconduct punishable under the PEC Employees' (Conduct, Discipline and Appeal) Rules, 1975.

The appellant was also asked to submit his defence statement within 10 days from the date of the receipt of the memorandum. The appellant by his letter dated February 13, 1980 requested for extension of time to file the defence statement. It appears that he sought further extension of time by three weeks which request was declined by the memorandum dated February 23, 1980. The Committee of Management in exercise of the powers conferred by sub-rule (4) of Rule 27 of the 1975 Rules appointed Shri A. S. Nangia, Chief Marketing Manager as the inquiry officer to inquire into the charges against the appellant. The appellant submitted on June 13, 1980 a detailed statement pointing out that the inquiry was the outcome of malice for various reasons therein mentioned and also explaining why there was delay in refunding the advances and specifically pleaded that in view of the fact that the first advance was sought to be recovered by withholding his salary and adjusting the pay towards advance and charging penal intere

6. In para 4 of his report, the inquiry officer states that the "preliminary hearings of the inquiry was held on April 3 and 9, 1980 and then inquiry was held regularly on various dates from April 23, 1980 to May 22, 1980. The appellant was called upon to submit his statement of defence which he had submitted on June 30, 1980".

7. The findings purported to have been recorded by the inquiry officer were the subject matter of a heated debate between the parties and therefore, the report of the inquiry officer may be broadly scanned here. After recapitulating in paras 1 to 4 the various stages through which the inquiry progressed, in para 5, it is stated that at the" preliminary hearing on April 3, 1980, Shri A. L. Kalra, (appellant) pleaded guilty to all the charges mentioned in Annexure I and also agreed to the statement of imputation of his misconduct in support of the articles of charges framed against him." In para 5 (3), the inquiry officer discussed the first head of charge in respect of the house building advance. It was found as a fact that the advance was taken for the purchase of a plot and that the appellant had negotiated for a purchase of a plot from Shri J. C. Chugh who was examined as a management witness and who admitted that he waited for six months to complete the transaction but after that he disposed of the plot.

8. The inquiry officer then proceeded to examine the second head of the charge. After recapitulating the fact about sanction of advance and drawal of the same, it was observed that the appellant drew the advance on July 9, 1979 and on April 7, 1980 he submitted the documents such as cash receipt in respect of purchase of a scooter, insurance certificate, receipt of balance amount deposited with the cashier, original insurance policy and registration book evidencing the purchase of scooter. It is then observed that under the relevant rules motor cycle had to be purchased within one month from the date of the drawal of the advance or else he should have obtained fresh sanction for the purchase of a scooter instead of a motor cycle. Then comes the particular observation which may be extracted :

> He (appellant) did not obtain any fresh sanction for purchase of a scooter but simply submitted the papers for regularisation of the advance and although no specific letter for sanction of the purchase of a scooter was issued by the Personnel Division yet the fact that he was asked to refund the balance amount tantamounts to agreeing de facto sanction for the purchase of the same.

The inquiry officer then proceeds to dispose of the contention of the appellant that in other cases of similar advance and default, no action was taken but he was singled out for a harsh treatment for the reasons alleged by him but with which we are not concerned at this stage. The inquiry officer then noticed that the full salary payable every month to the appellant was stopped by the Corporation from November 16, 1979 in addition to the inquiry under which disciplinary action was proposed to be taken. The inquiry officer concluded his report as under :

> While deciding the case, the fact that the salary was stopped from November 16, 1979 may be kept in view as this may, I feel, tantamount to double punishment. Normally even where an employee is suspended certain amount of subsistence allowance is granted whereas in this case the salary was completely stopped and nothing has been paid since then.

9. What is referred to as the report of the inquiry which is minutely scanned in the preceding paragraphs merely seems to be the record of inquiry and recapitulation of allegations and explanation. What is styled as findings of the inquiry officer are separately filed being Annexure M

to the petition. This is a bald document of two paragraphs in which the inquiry officer records that the appellant has contravened Rule 10 (1) (c) (i) of House Building Advance Rules and has thereby committed misconduct punishable under Rule 4 (1) (iii) of 1975 Rules. In paragraph 2, it is stated that the appellant has committed breach of Rule 8 and Rule 10 (i) of the Conveyance Advance Rules and has thereby committed misconduct punishable under Rule 4 (1) (iii) of 1975 Rules. By that process this conclusion is reached or what evidence appealed to him is left to speculation. The reasons in support of the conclusion are conspicuous by their absence. The findings are the ipse dixit of the inquiry officer.

10. Pursuant to this report of the inquiry officer the Executive Director for and on behalf of the Committee of Management of the Corporation made an Order No. PEC : P : 5 (8) /77 dated February 4, 1981. The heads of charges are reproduced in paragraph 1. Paragraphs 2 and 3 are devoted to the stages through which the inquiry progressed. In paragraph 4, the findings unsupported by reasons are reproduced. In paragraph 5, it is stated that the Committee of Management agrees with the findings of the inquiry officer and imposes the punishment of removal from service with effect from the date of the order.

11. The appellant preferred an appeal to the Appellate Authority being the Board of Directors of the Corporation on February 21, 1981. One Anand Krishna claiming to act for and on behalf of the Board of Directors, Appellate Authority issued memorandum dated May 21, 1981. Annexure P to the petition in which it is stated that the appeal of the appellant was considered by the Appellate Authority and after going through the records of the case, the Appellate Authority has decided to uphold the decision of the authority and to confirm the penalty of removal imposed upon him.

12. The salient feature which flies into the fact about the findings recorded by the inquiry officer and the order made by the Disciplinary Authority as well as the Appellate Authority is that none of them made a reasoned order or speaking order and their conclusions are mere ipse dixit unsupported by any analysis of the evidence or reasons in support of the conclusions.

13. The appellant approached the High Court of Delhi under Article 226 of the Constitution questioning the correctness and validity of the findings of the inquiry officer and the decision of the Disciplinary Authority as well as the Appellate Authority inter alia on the ground that the inquiry was held in violation of the principles of natural justice and the quasi-judicial authority failed to give reasons in support of its order and the action taken against the appellant was per se arbitrary and in violation of Article 14 and Article 16 of the Constitution inasmuch as the allegations contained in the heads of charges, even if unrebutted, do not constitute a misconduct within the meaning of the expression in 1975 Rules. In order to sustain the maintainability of the writ petition, the appellant also contended that the respondent is an instrumentality of the State and is comprehended in the expression 'other authority in Article 12 of the Constitution.

14. The writ petition came up for admission before a Division Bench of the Delhi High Court. It was dismissed in limine observing that the writ petition is not maintainable on the facts presently set out in the petition. Hence this appeal by special leave.

15. In order to obtain any decision on merits, the appellant will have to clear the roadblock about the maintainability of the writ petition in the High Court. Happily this untenable contention was not pursued in this Court. In para 2 (vi) of the counter-affidavit filed by one Mahanand Khokher on behalf of the respondents it was unambiguously stated that the " respondent-Corporation is advised not to dispute the maintainability of the petitioner's petition as regards applicability of Article 12 of

the Constitution". Further in para 5.1 of the same affidavit, it was stated that as regards the assertion of the appellant that the respondent-Corporation is an instrumentality of the Central Government and hence within Article 12 of the Constitution, the respondent-Corporation does not dispute the same. This admission was reiterated in para 5.2. Further in the written submissions dated September 30, 1983 filed on behalf of the respondent, it is conceded that the respondent is a State within the meaning of Article

16. Once when in this Court it was conceded that the respondent was amenable to the writ jurisdiction of the High Court, the question arose whether the matter should be remitted to the High Court as the High Court has rejected the writ petition in limine on the ground that the respondent was not amenable to the writ jurisdiction of the High Court. Ultimately, in order not to protract the litigation involving livelihood of the appellant, the appeal was set down for final hearing on merits. The respondent-Corporation was accordingly directed to file its affidavit as also the documents on which it seeks to rely. The appeal was thereafter heard on merits.

17. Before we deal with the contentions raised on behalf of the appellant, it is necessary to dispose of a contention having a flavour of a preliminary objection raised by Mr. Lal Narain Sinha on behalf of the respondent-Corporation. It was urged that in the absence of any specific pleading pointing out whether anyone else was either similarly situated as the appellant or dissimilarly treated the charge of discrimination cannot be entertained and no relief can be claimed on the allegation of contravention of Article 14 or Article 16 of the Constitution. It was submitted that the expression discrimination imports the concept of comparison between equals and if the resultant inequality is pointed out in the treatment so meted out the charge of discrimination can be entertained and one can say that equal protection of law has been denied. Expanding the submission, it was urged that the use of the expression 'equality' in Article 14 imports duality and comparison which is predicated upon more than one person or

18. It is difficult to accept the submission that executive action which results in denial of equal protection of law or equality before law cannot be judicially reviewed nor can it be struck down on the ground of arbitrariness as being violative of Article 14. Conceding for the present purpose that legislative action follows a legislative policy and the legislative policy is not judicially reviewable, but while giving concrete shape to the legislative policy in the form of a statute, if the law violates any of the fundamental rights including Article 14, the same is void to the extent as provided in Article 13. If the law is void being in violation of any of the fundamental rights set out in Part III of the Constitution, it cannot be shielded on the ground that it enacts a legislative policy. Wisdom of the legislative policy may not be open to judicial review but when the wisdom takes the concrete form of law, the same must stand the test of being in tune with the fundamental rights and if it trenches upon

19. The scope and ambit of Article 14 have been subject matter of a catena of decisions. One facet of Article 14 which has been noticed in E. P. Royappa v. State of Tamil Nadu deserves special mention because that effectively answers the contention of Mr. Sinha. The Constitution Bench speaking through Bhagwati, J. in a concurring judgment in Royappa case observed as under; (SCC para 85, p. 38 : SCC (L&S) p. 200)

The basic principle which, therefore, informs both Article 14 and 16 is equality and inhibition against discrimination. Now what is the content and reach of this great equalising principle ? It is a founding faith, to use the words of Bose, J., " a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-

embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be" cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violati

This view was approved by the Constitution Bench in Ajay Hasia case. It thus appears well-settled that Article 14 strikes at arbitrariness in executive/administrative action because any action that is arbitrary must necessarily involve the negation of equality. One need not confine the denial of equality to a comparative evaluation between two persons to arrive at a conclusion of discriminatory treatment. An action per se arbitrary itself denies equal of (sic) protection by law. The Constitution Bench pertinently observed in Ajay Hasia case and put the matter beyond controversy when it said " wherever therefore, there is arbitrariness in State action whether it be of the Legislature or of the executive or of an 'authority' under Article 12, Article 14 immediately springs into action and strikes down such State action". This view was further elaborated and affirmed in D. S. Nakara v. Union of India. In Maneka Gandhi v. Union of India it was observed that Article 14 strikes at arbitrariness in State action and

20. It must be conceded in fairness to Mr. Sinha that he is right in submitting that even if the respondent-Corporation is an instrumentality of the State as comprehended in Article 12, yet the employees of the Corporation are not governed by Part XIV of the Constitution. Could it however be said that a protection conferred by Part III on public servant is comparatively less effective than the one conferred by Part XIV ? This aspect was examined by this Court in Managing Director, Utter Pradesh Warehousing Corporation v. Vinay Narayan Vajpayee where O. Chinnappa Reddy, J. in a concurring judgment has spoken so eloquently about it that deserves quotation : (SCC para 22, pp. 468-69 : SCC (L&S) pp. 462-63)

I find it very hard indeed to discover any distinction, on principle between a person directly under the employment of the government and a person under the employment of an agency or instrumentality of the government or a corporation, set up under a statute or incorporated but wholly owned by the government. It is self-evident and trite to say that the function of the State has long since ceased to be confined to the preservation of the public peace, the exaction of taxes and the defence of its frontiers. It is now the function of the State to secure " social, economic and political justice", to preserve " liberty of thought, expression, belief, faith and worship", and to ensure " equality of status and of opportunity". That is the proclamation of the people in the preamble to the Constitution. The desire to attain these objectives has necessarily resulted in intense governmental activity in manifold ways. Legislative and executive activity have reached very far and have touched very many aspects of a citiz

Therefore the distinction sought to be drawn between of Part XIV of the Constitution and Part III has no significance.

21. And now to the facts. The gravamen of the

two heads of charges is that the appellant is guilty of misconduct as prescribed in Rule 4 (1) (i) and (iii). It reads as under :

4. (1) Every employee shall at all times :

(i) maintain absolute integrity;

#(ii) * * *##

(iii) do nothing which is unbecoming of a public servant.

Rule 5 prescribes various misconducts for which action can be taken against an employee governed by the Rules.

22. Rule 4 bears the heading 'General'. Rule 5 bears the heading 'Misconduct'. The draftsmen of the 1975 Rules made a clear distinction about what would constitute misconduct. A general expectation of a certain decent behaviour in respect of employees keeping in view Corporation culture may be a moral or ethical expectation. Failure to keep to such high standard of moral, ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rule 5. Any attempt to telescope Rule 4 into Rule 5 must be looked upon with apprehension because Rule 4 is vague and of a general nature and what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved enta le 5 and no penalty can be imposed for such conduct. It may as well be mentioned that Rule 25 which prescribes penalties specifically provides that any of the penalties therein mentioned can be imposed on an employee for misconduct committed by him. Rule 4 does not specify a misconduct.

23. Mr. Ramamurthi, learned counsel for the appellant further contended that the very initiation of the disciplinary inquiry and imposition of punishment of removal from service is thoroughly arbitrary and discloses a vindictive attitude on the part of the respondent Corporation. It was urged that the two heads of charges have been extracted hereinbefore. Charge 1 refers to the drawal of a house building advance and failure to comply with the requisite rules prescribed for house building advance. According to the finding recorded by the inquiry officer, the failure of the appellant to refund the amount of advance to the respondent-Corporation within two months of the date of the drawal would be violative of Rule 10 (1) (c) (i) of the House Building Advance Rules and it would constitute misconduct within the meaning of the expression in Rule 4 (1) (iii) of 1975 Rules. Rule 10 (1) provides that the advance shall be drawn in instalments as prescribed in various sub-clauses. The relevant sub- clause in this case

24. Turning to the second head of charge, it is alleged that the appellant applied for an obtained a conveyance allowance (sic advance) of Rs. 11,000 on July 7, 1979 but did not utilise the amount for the purpose for which it was granted and did not furnish cash receipt evidencing purchase of a vehicle within one month as required by Rule 8 of the Conveyance Advance Rules, nor did he refund the amount to the Corporation as required by Rule 10 (1). It is not in dispute that the respondent applied for a motor cycle advance which was sanctioned and on being sanctioned he drew the same on July 9, 1979. As required by the respondent, the appellant executed an agreement on July 6, 1979, a day preceding the sanction of the advance guaranteeing that if the motor cycle was not purchased and hypothecated within one month from the date of the drawal of the advance, the whole of the advance together with the interest accrued thereon would become refundable. As the appellant did not keep to the time schedule, memos dated

25. The first question we must pose to ourselves is whether taking the findings of facts as recorded by the inquiry officer and accepting for the present purpose that they are not open to a judicial review, do they constitute misconduct so as to invite penalty ? According to the inquiry officer, failure either to produce the documents or to refund the amount within a period of one month from the drawal of the conveyance allowance advance constitutes contravention of Rule 10 (1) of the Conveyance Advance Rules. Rule 10 reads as under :

> 10. (1) Where an employee after taking advance is unable to purchase the vehicle for any reason, he shall refund within one month of drawal of advance the full amount with interest thereon to the Corporation. If he fails to do so, he shall be liable to disciplinary action for misconduct in addition to liability for payment of additional interest in accordance with sub-rule (2).
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> (2) Where an amount of advance is retained by an employee beyond one month or where the employee fails to produce evidence of purchase, insurance policy or registration book, the normal rate of interest under rule 5 will be charged for the first month and for the period in excess of one month in addition to the normal rate of interest, additional interest at a rate equivalent to difference between the borrowing rate of the Corporation and the normal rate chargeable under Rule 5 will be charged. The additional rate of interest will be compound interest and it will be merged with the principal at monthly intervals for the purpose of calculating interest for subsequent periods.

In this connection, our attention was drawn to Circular dated December 11, 1979 issued by the respondent-Corporation which provides that henceforth a penal interest will be levied/charged "on the total drawn amount under the Conveyance Advance Rules in case vouchers or receipts are not produced to the Personnel Division Within the prescribed period, or in case the amount drawn is refunded without utilisation." It thus transpires that drawal of the advance. If not utilised within the prescribed period or if not refunded within the same time, will expose the drawer to a liability to penal interest. And in this case, it has been so charged.

26. Now if what is alleged as misconduct does not constitute misconduct not by analysis or appraisal of evidence, but per se under 1975 Rules the respondent had neither the authority nor the jurisdiction nor the power to impose any penalty for the alleged misconduct. An administrative authority who purports to act by its regulation must be held bound by the regulation."Even if these regulations have no force of law the employment under these corporations is public employment and therefore, an employee would get a status which would enable him to obtain a declaration for continuance in service, if he was dismissed or discharged contrary to the regulations." (Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi).

27. If thus it is satisfactorily established that the employment under such Corporation like the respondent which is an instrumentality of the State, is public employment, it is difficult to entertain the submission of Mr. Sinha which did prevail for some time in the days gone by that contract of public service cannot be specifically enforced.

Mr. Sinha in this connection relied upon Section 14 of the Specific Relief Act, 1963 and urged that where the origin of employment is in a contract the breach of it cannot be remedied by directing specific performance of a contract of personal service. He also drew our attention to Western India Automobile Association v. Industrial Tribunal, Bombay where a constitution Bench of this Court

has observed as under.

It is true that this Tribunal can do what no court can, namely, add to or alter the terms or conditions of the contract of service, Express power to do so is given by the regulation, while there are no words conferring a power to reinstate or revive a contract lawfully determined.

Reference was also made to Dr. S. B. Dutt v. University of Delhi wherein it was held that an arbitrator appointed by the parties and functioning under the Arbitration Act, 1940 cannot by his award enforce a contract of personal service in contravention of the provisions of the Specific Relief Act and this discloses an error apparent on the face of the award. But neither Section 14 nor the aforementioned two decisions can render any assistance to the respondent because it is well-settled that in the matter of public employment if the termination is held to be bad, in view of the latest decisions in Sukhdev Singh and Utter Pradesh Warehousing Corporation cases, a declaration can be granted that the man continues to be in service.

28. Mr. Ramamurthi on behalf of the appellant farther contended that the order of removal form service is void as it is passed in violation of the principles of natural justice and at any rate an order imposing penalty by a quasi-judicial tribunal must be supported by reasons in support of its conclusions. It was urged that duty to give reasons would permit the court hearing a petition for a writ of certiorari to ex facie ascertain whether there is any error apparent on the record. It was conceded that for the present submission adequacy or sufficiency of reasons is not questioned. What is contended is that the inquiry officer has merely recorded his ipse dixit and no reasons are assigned in support of the findings. The mental process is conspicuously silent. A speaking order will at its best be reasonable and at its worst be at least a plausible one (M. P. Industries Ltd. v. Union of India). What prevents the authority authorised to impose penalty from giving reasons ? If reasons for an order are given, the

29. The situation is further compounded by the fact that the disciplinary authority which is none other than Committee of Management of the Corporation while accepting the report of the inquiry officer which itself was defective did not assign any reasons for accepting the report of the inquiry officer. After reproducing the findings of the inquiry officer, it is stated that the Committee of Management agrees with the same. It is even difficult to make out how the Committee of Management agreed with the observations of the inquiry officer because at one stage while recapitulating the evidence the inquiry officer unmistakably observed that appellant was subjected to double punishment and at other place, it was observed that granting extension of time and acceptance of documents and balance advance would tantamount to extending the time which would make the affair look wholly innocuous. This shows utter non-application of mind of the Disciplinary Authority and the order is vitiated.

30. A detailed appeal was submitted by the appellant to the Board of Directors running into about 8 pages. The only order while dismissing the appeal brought to our notice is a communication by a gentleman Anand Krishna whose authority and designation are not stated, but who purported to act on behalf of the Board of Directors, that the appellate Authority, after going through the records of the case, has decided to uphold the decision of the Disciplinary Authority and to confirm the penalty of removal from service imposed upon the appellant. Rule 35 of 1975 Rules deals with appeals. Sub-rule (ii) of Rule 35 provides amongst others that the Appellate Authority shall consider whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders within three months of the date of appeal. In order to ascertain whether the rule is complied with, the order of the Appellate Authority must show that it took into consideration the findings the

quantum of penalty and other r

31. To sum up the order of removal passed by Disciplinary Authority is illegal and invalid for the reasons. (i) that the action is thoroughly arbitrary and is violative of Article 14, (ii) that the alleged misconduct does not constitute misconduct within the 1975 Rules, (iii) that the inquiry officer himself found that punishment was already imposed for the alleged misconduct by withholding the salary and the appellant could not be exposed to double jeopardy, and (iv) that the findings of the inquiry officer are unsupported by reasons and the order of the Disciplinary Authority as well as the Appellate Authority suffer from the same vice. Therefore, the order of removal from service as well as the appellate order are quashed and set aside.

32. The last question then is to what relief the appellant is entitled ? Once the order of removal from service is held to be illegal and invalid and the appellant being in public employment, the necessary declaration must follow that he continues to be in service uninterruptedly, this aspect does not present any difficulty and the declaration is hereby granted.

33. When removal from service is held to be illegal and invalid, the next question is whether : the victim of such action is entitled to back wages. Ordinarily, it is well-settled that if termination of service is held to be bad, no other punishment in the guise of denial of back wages can be imposed and therefore, it must as a necessary corollary follow that he will be entitled to all the back wages on the footing that he has continued to be in service uninterruptedly. But it was pointed out in this case that the appellant was employed as Factory Manager by M/s KDR Woollen Mills, A-90 Wazirpur Industrial Area, Delhi from where he resigned with effect from August 8, 1983. It was also submitted that he was drawing a salary of Rs. 2500 per month. Now if the appellant had procured an alternative employment, he would not be entitled to wages and salary from the respondent. But it is equally true that an employee depending on salary for his survival when he is exposed to the vagaries of the court litigation canno

34. The submission of the respondent that the appellant had accepted employment with M/s KDR Woollen Mills may be accepted in view of the evidence tendered in the case. Therefore, the appellant would not be entitled to salary for the period he was employed with M/s KDR Woollen Mills.

35. Even for the rest of the period, the conduct of the appellant cannot be said to be entirely in consonance with corporate culture. As a highly placed officer he was bound to strengthen the corporate culture and he should have acted within the spirit of the regulations both for house building advance and conveyance advance, which are devised to help the employees. There has been lapse in totally complying with these regulations by the appellant though it neither constitutes misconduct to attract a penalty nor substantially good enough for initiation of disciplinary inquiry. Accordingly, having regard to all the aspects of the case, the appellant should be paid 50 per cent of the back wages for the period since his removal from service up to his reinstatement excluding the period for which he had procured an alternative employment. The respondent shall also pay the costs of the appellant quantified at Rs. 3000.

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